



Writ Petition No.18500 of 2009

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated : 17.12.2024**

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**Coram**

**THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**Writ Petition No.18500 of 2009**

**&**

**M.P.No.1 of 2009**

The Director  
Christian Medical College & Hospital  
Ida Scudder Road, Vellore – 632 004  
Rep. By its Council Secretary

.. Petitioner

vs.

1. The Presiding Officer  
Additional Labour Court, Vellore

2. Mr.Raja Sarguna Selvakumar

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records connected with I.D.No.280 of 1999 on the file of 1<sup>st</sup> respondent i.e., Additional Labour Court, Vellore and to quash the award dated 17.07.2009 made therein.

For Petitioner : Mr.S.Shivathanu Mohan  
for M/s.S.Ramasubramaniam  
Associates (Law Firm)

For Respondents : Mr.M.Sathish Kumar  
for Mr.K.Sathish Kumar for R2

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*Writ Petition No.18500 of 2009*

## **ORDER**

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This writ petition is filed challenging the award passed by the Additional Labour Court in I.D.No.280 of 1999 dated 17.07.2009.

2. The brief factual background in which this case arises is that the workman was originally employed in the post of Attender Grade II with effect from 21.03.1988. While so, he was issued with a charge memorandum on 23.12.1993 stating that he was on unauthorised absence without any leave or permission for the period from 11.09.1992, 12.09.1992, 17.09.1992 to 10.08.1993 and from 10.09.2003 to till the date of issue of the charge memorandum. The said charge memo was served on the workman by Registered Post and acknowledgement card is also produced. He did not give any explanation whatsoever to the charge memo denying the charges. Even thereafter, a memorandum dated 21.12.1994 was again served on him requesting him to attend the enquiry. That memorandum was received by him but he did not attend the enquiry.



Writ Petition No.18500 of 2009

3. Thereafter, the Enquiry Officer conducted an enquiry in which the workman remained absent. Even in the *ex parte* enquiry, witnesses were examined and documents were marked. In the enquiry, the complaint given by the concerned Authority of the Management was marked as Ex.M1. Thereafter, all the returned covers and notices served on the workman periodically for the enquiry proceedings were all marked. One S.Antoniswamy, who was the In-charge personal officer, was examined as the Management witness. On the strength of the said evidence, the Enquiry Officer returned the finding as charge proved.

4. Thereafter, the second show-cause was issued to the workman on 11.07.1994. Only thereupon, the workman submitted an explanation. As per his explanation, his preliminary grievance is that he is qualified in the field of Electrical, but without giving an employment commensurate to his qualification, he was ill-treated by giving a job of Office Attender and therefore, he felt demotivated. On account of this, he was depressed and mentally ill and was wandering here and there without even telling or informing his parents and that is why, he was not able to attend duty at the relevant period. Therefore, he prayed that his absence should not be treated as a misconduct and he prayed for justice. His explanation was



*Writ Petition No.18500 of 2009*

not accepted and he was imposed with the punishment by order dated 23.08.1994 terminating his services. Even thereafter, the workman did not immediately raise any dispute.

5. After almost 5 years i.e., in the year 1999, the workman raised a dispute. After the punishment, since there was a industrial dispute pending, the Management filed a petition in Petition No.97 of 1994 before the Industrial Tribunal under Section 33 (2)(b) of the Industrial Disputes Act, 1947 for approval of the action taken by the Management. Even before the Industrial Tribunal, after service of notice, the workman remained absent and by an order dated 10.10.1995, after considering the entire facts, approval was granted. Thereafter in the year 1999, the workman raised the present dispute and upon the conciliation ending in failure, the claim petition was taken on file in I.D.No.280 of 1999 under Section 2(A) 2 of the Industrial Disputes Act, 1947.

6. It is the claim of the workman that the charge memo has been given to him on the allegation that he was unauthorisedly absent. According to him, the facts that he did not attend the duty are all incorrect. He would further submit that when the charge against him was





*Writ Petition No.18500 of 2009*

workman was absent inasmuch as the Attendance Register for the relevant period was not marked before the Labour Court. Secondly, it held that the relevant employees who issued the charge memo etc., were not examined before the Labour Court and MW1 is a person, who subsequently took charge, would not be having personal knowledge and his evidence cannot be taken into account and held that the Management did not avail the opportunity of letting in evidence and prove the charge and therefore, ordered reinstatement of the workman, however, with 50% of back wages and continuity of service, aggrieved by which the petitioner Management is before this Court.

8. The learned counsel appearing for the Management would submit that firstly the preliminary award is erroneous in law. For every proceeding in the domestic enquiry, notices were sent to the workman and he received the same. Even in his explanation given to the second show-cause notice, he admits receipt of those notices. Therefore, when the workman remained absent by his own act, the enquiry cannot be held to be improper or without giving appropriate opportunity. Secondly when an approval petition is filed and finding is given by the very same Industrial Tribunal holding that the enquiry is fair and proper and when



Writ Petition No.18500 of 2009

the workman has not filed any petition even to set aside the *ex parte* approval, which is granted, the same is binding on the workman and therefore, Labour Court ought not to have come to a different conclusion. Therefore, the preliminary award is erroneous in law.

9. As far as the final award is concerned, the Management has let in evidence in the form of oral evidence of MW1 and the complaint given by the appropriate official, who is in the supervisory capacity, is marked as MW1 that he is absent. As a matter of fact, in this case, the charge itself was not denied by the workman by giving any explanation. Secondly, in the detailed explanation which he has given, he has categorically admitted the factual position that he had remained absent. Therefore, when the facts are admitted, there is no question of further producing the Attendance Register or examining the appropriate witness.

10. Per contra, the learned counsel appearing on behalf of the workman, drawing the attention to the relevant portion of the award would submit that when the enquiry has been held to be not fair and proper by considering the various documents which are produced by the workman including the fact that he was undergoing treatment at CMC



*Writ Petition No.18500 of 2009*

Hospital, then the Management ought to have proved the charge before the Labour Court by adducing evidence. The least which should have been done by the Management is to produce the Attendance Register to prove the unauthorised absence, but the same is not done. Secondly, the employee who had personal knowledge about the fact that the workman remained unauthorisedly absent was also not examined. In that situation, no exception whatsoever can be taken to the findings of the Labour Court. Further, the Labour Court has already ordered reinstatement only with 50% of the back wages and the award need not be interfered with.

11. I considered the rival submissions made on either side and perused the material records of the case.

12. Firstly, I am of the view that when at every stage of the enquiry, notices have been sent to the workman and hence, the workman cannot claim that he was not given a fair opportunity. When suddenly for the first time, after the issuance of second show-cause notice, the workman claims that the Management is not giving appropriate job in the field of Electrical, even at that point of time, in response to the second show-cause, he does not specially say that he is willing to join



Writ Petition No.18500 of 2009

work at the relevant point of time or on any particular date he will report back to work. The fact remains that even after issue of charge memorandum he continuously absented himself from work. In that scenario, when the approval petition is filed by the Management, in this case before the Industrial Tribunal and the Tribunal itself having dealt with the petition under Section 33(2)(b) of Industrial Disputes Act and having given a finding by its order dated 10.10.1995 in Petition No.97 of 1994 and coupled with the facts and circumstances of the case that it is a case that the workman has remained continuously absent on his own volition, he cannot turn around and say that the enquiry was not fair and proper. I am of the view that the preliminary award is erroneous in law. The most important factor which the Court took into consideration is that the charge is levelled against the workman and when he received the charge memo, he has not even given an explanation denying the charges. In that scenario, the conduct of enquiry itself was only in addition to the non-denial of the charges. Even when the workman remaining *ex parte*, the enquiry was duly conducted by examining the witnesses and also marking the documents. Therefore, I find that the enquiry was fair and proper and the preliminary award is erroneous in law.



*Writ Petition No.18500 of 2009*

13. Even considering the second question that whether there is any

evidence with reference to the charge or not, it can be seen that firstly in the very explanation of the workman he admits the fact that he was unauthorisedly absent on those days. He remained continuously absent during the enquiry proceedings and even before the Industrial Tribunal when the approval petition is filed. Only after four years, he woke up and filed the claim. Therefore, when there is evidence before the Labour Court in the form of Ex.M2 being the complaint of Mr. Antoniswamy, who reported that the workman is not turning up for the work and when there is no contra evidence which is let in by the workman, especially when the explanation of the workman is also marked as a document, no further evidence in the form of Attendance Register or the employee is necessary and there is adequate evidence on record to prove the misconduct. As a matter of fact, the past conduct of the workman is categorically revealed in the affidavit in support of the writ petition and it can be seen that even when he was appointed in March 1998, his unauthorised absence started from December 1998 onwards and on 18 occasions, several punishments were imposed against him. Of the allegations, atleast on 15 occasions, the allegations against him was of unauthorised absence. It is the case of the Management that within a



*Writ Petition No.18500 of 2009*

short span of 6 years, the workman remained unauthorisedly absent for a period roughly about 2 ½ years and only worked for a period of 3 ½ years and it is in this background, the charge of unauthorised absence ought to have been looked into by the Labour court. The findings of the Labour Court are perverse in nature and Labour Court thoroughly overlooked the evidence adduced on behalf of the Management. When on behalf of the Management, the present Officer in-charge, namely Samuel N.J.David is examined, it cannot be insisted that the Manager who was in the relevant period alone should be examined. The documentary evidence on record which includes the complaint of the appropriate Officer as MW2 and explanation given by the workman himself to the second show-cause notice would clearly prove the unauthorised absence. Further in the explanation to the second show-cause notice, the workman had taken a defence that he was mentally not well and therefore, he was unauthorisedly absent. In the claim petition, he has taken a contrary stand that on account of family problems, he was unauthorisedly absent. That was also not noticed by the Labour Court.

14. In that view of the matter, I hold that the findings of the Labour Court are perverse in nature warranting interference by this



*Writ Petition No.18500 of 2009*

Court. However, it can be seen that since the punishment is only with reference to unauthorised absence not causing any loss to the Management and not an offence of moral turpitude, for the period of work, the workman is entitled for the gratuity. If the same remains unpaid, the same should be paid to the workman.

15. In view thereof, this writ petition is allowed on the following terms:

i) the preliminary award dated 12.02.2008 and the final award dated 17.07.2009 in I.D.No.280 of 1999 shall stand set aside;

ii) The punishment imposed by the petitioner management terminating the services of the petitioner with effect from 11.07.1994 stands upheld;

iii) The workman is only entitled for the gratuity for the period of his employment i.e., from 21.03.1988 till 11.07.1994 and if the same remains unpaid, the same shall be paid to the workman within a period of four weeks from the date of receipt of a copy of this order. The workman shall also submit a representation indicating the present Bank Account and other



*Writ Petition No.18500 of 2009*

details to the Management so that if any amount remains unpaid by treating his termination of service as valid, be paid including the gratuity as stated above.

Consequently, the connected miscellaneous petition is closed.

There shall be no order as to costs.

**17.12.2024**

Index:Yes  
Speaking Order  
Neutral Citation:Yes  
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To

The Presiding Officer  
Additional Labour Court, Vellore



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*Writ Petition No.18500 of 2009*

**D.BHARATHA CHAKRAVARTHY., J**

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**Writ Petition No.18500 of 2009**

17.12.2024